Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

CHARLES K. MONIN, JR.

Petitioner,

v.

ROGER LEGGET, RECEIVER FOR MONIN INC. ET. AL.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY
NO. 2002-SC-716-D

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether or not the Commonwealth of Kentucky misapplied state dissolution statutes to deny Petitioner his contract rights in violation of Art. I, Sec. 10, U.S.C.A. and Sec. 19, Bill of Rights, Ky. Const.

(2) Whether or not the Commonwealth of Kentucky denied Petitioner due process in depriving him of his contract rights. Sec. 1, 14 Amend., U.S.C.A.

PARTIES

Petitioner: Charles K. Monin, Jr.

Respondents: Paul B. Monin, Joseph E. Monin, James A. Monin, Martha Wheeler, Raphael Monin, William Monin, Linda Roby, Carolyn Backherms, and Roger Leggett Receiver for Monin Inc.

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OPINIONS/ORDERS BELOW

(1) Supreme Court of Kentucky Order Denying Discretionary Review entered 12/11/03;
(2) Court of Appeals of Kentucky Order Denying Motion to Reconsider, 8/5/02;
(3) Court of Appeals of Kentucky Opinion & Order Affirming Nelson Circuit Court, 6/14/02; and
(4) Findings of Fact, Conclusions of Law and Judgment of Nelson Circuit Court, 4/6/00.

JURISDICTION

(1) This petition is timely filed on or before 3/10/04 per Rules 13 and 29 based on the Supreme Court of Kentucky Order Denying Discretionary Review entered 12/11/03.
(2) Title 28 U.S.C. 1257 confers upon this court jurisdiction to review by writ of certiorari final state court judgments where any right is claimed under the Constitution of the United States.

CONSTITUTIONAL PROVISIONS

Art. I, Sec. 10, U.S.C.A.:
"No State shall . . . pass any . . . .
Law impairing the Obligation of Contracts . . . . "

Sec. 19, Bill of Rights, Ky. Const.:
" . . . , nor any law impairing the obligation of contracts, shall be enacted."

Sec. 1, 14th Amend., U.S.C.A.:
" . . . nor shall any State deprive any person of . . . property, without due process of law . . . "

STATEMENT OF CASE

BACKGROUND

On the third day of February, 1991, the Monin family and Monin Inc., a closely held family corporation, executed a settlement agreement to resolve prior litigation and pending issues between the surviving ten Monin siblings after the demise of their parents.

Under this contract, inter alia, the parties intended to have a full and final accounting of the estates of their parents, from which each of the siblings inherited 5% stock in Monin Inc. Charles K. Monin, Jr. already owned 50% of the corporation. The contract was also drafted to settle the rights, interests and obligations of the parties with regard to Monin Inc. To accomplish this goal, the contract mandated the continuing existence of Monin Inc. in the sole ownership of Charles K. Monin, Jr. and Donald Monin. The land, which is a commercially valuable farm near Bardstown, Kentucky was to be divided between the two groups of siblings, who were required to hold and use the land under I.R.S. regulations for a period of time to eliminate, or minimize, a potential, substantial tax liability on any transfer, sale or exchange of the stock and/or land.

When there arose a question of whether or not federal estate tax liability had been misrepresented by the Monin Respondents, and the issue was not resolved, Charles K. Monin, Jr. and Donald Monin sued their siblings for fraud in the inducement to set aside the agreement, and for maladministration of their parents' estates.

In the interim the Petitioner and Don Monin refused to carry out any terms of the contract so as not to ratify the same and nullify their claim for relief under contract law. Respondents then resorted to numerous motions to compel performance.

Prior to trial on the fraud claim, the Nelson County Circuit Court ordered compliance and held Charles K. Monin, Jr. in contempt for which he served thirty days in 1996.

In early 1997, a jury trial resulted in a verdict in favor of the Monin Respondents thereby upholding the validity of the contract. The Petitioner and Don Monin accepted the verdict and made numerous requests to the Monin Respondents to consummate the Settlement Agreement. At this time the parties disagreed that execution was predicated on a pre-condition that the estates of the parents be settled.

Meanwhile, the Monin Respondents further refused to carry out the contract when in 1996 Isaac Commercial Properties of Lexington, Kentucky, on behalf of the Walmart Real Estate Business Trust, offered to buy 35 acres of the 150 acre farm to build a new superstore. However, the land required included parcels from both groups, and the Petitioner and Don Monin elected to keep their land under the contract. Not only had Charles K. Monin, Jr., his family and parents resided on the farm since the 1950s, family businesses were operated from 3 acres of the farm. Furthermore, they objected that any sale would violate the settlement agreement under the aforesaid I.R.S. regulations, triggering substantial tax liabilities.

In order to circumvent the contract, the Monin Respondents filed a petition to judicially dissolve Monin Inc. under Kentucky statue. (K.R.S. 271B.14-300 et. seq.)

MATERIAL FACTS re: QUESTIONS PRESENTED FOR REVIEW:

To protect their contract rights, Charles K. Monin, Jr. and Don Monin, filed Amended Petitions for a Declaration of Rights under Kentucky statute, which mandates a hearing if the application of a statute conflicts with a contract. (K.R.S. 418.040; 418.045).

After a bench trial on the issues of dissolution and declaration of rights in 1997, the trial court ignored the declaration evidence without ruling and judicially dissolved Monin Inc. placing the assets of the corporation in the hands of Roger Leggett as Receiver.

In January, 1999, the Court of Appeals of Kentucky upheld the dissolution. The same court rejected the argument that the Settlement Agreement per se prohibited dissolution by waiver. The court found this argument unacceptable given its finding that Charles K. Monin, Jr. obstructed the contract prior to the fraud trail. Discretionary Review was denied by the Supreme Court of Kentucky on the 12th day of January, 2000.

By Judgement entered the 6th day of April, 2000 the Nelson Circuit Court denied a motion by Petitioner for declaratory relief and formally dismissed the Amended Peititions for a Declaration of Rights by declaring the settlement agreement null and void citing the law of the case doctrine per the Court of Appeals Opinion upholding dissolution and rejecting the waiver argument. The appellate court did not address the issue of the validity of the contract because that issue had not been decided by the trial court in a final judgement subject to appeal. (Ky. C.R. 54)

On June 14, 2002, the Court of Appeals of Kentucky rendered its Opinion & Order affirming the nullification of the contract. The Court of Appeals opined that any legal issues raised were fully considered by the prior panel and would not be reconsidered. Furthermore, the Court stated that said issues were "not preserved by being raised in the court below when appellants filed a petition for declaratory rights." (pp. 3-4)

However, counsel for Petitioner raised the issue in its brief to the Court of Appeals of December 28, 2000. Appellants argued what is being raised here. Appellants argued that the same constitutional provisions cited herein prohibiting state impairment of contracts under the circumstances mandated that the Settlement Agreement survive the dissolution of the family corporation. (p.10) The Appellants relied on the Kentucky appellate

decisions in Drane v. Weston, 125 S.W. 2d 722 (1939) and Kentucky Utilities Co. v. Carlisle Ice Co., 836 S.W. 2d 388 (1991), which specifically prohibit courts in Kentucky from interpreting statutes in violation of Sec. 19 of the Kentucky Bill of Rights (p. 11-12) And, the appellants cited contract law in Kentucky which holds that the terms of any contract include state and federal law in effect at the time of execution, and that there was no factual or legal basis to support voiding the contract. (pp. 13-16) Appellants also cited Sec. 1, 14th Amend., U.S.C.A. to argue they had been denied due process by the Kentucky courts. (p. 12) Finally, appellants relied on Ky. C.R. 61.02 which permitted review on appeal of "A palpable error which affects the substantial rights of a party. . . . even though insufficiently raised or preserved for review, ... " (p. 8)

On August 5, 2002, the Court of Appeals of Kentucky summarily rejected a motion to reconsider.

The Court did not accept the argument of Petitioner in his motion that the issues were preserved per the record. Firstly, the Petitioner argued he was entitled to declaratory relief due to the content of the Amended Petitions for a Declaration of Rights pursuant to K.R.S. 418.040 and 418.045, which provide respectively for the right to relief in general and specifically in cases where rights under contract are affected by statute. Under the Kentucky Supreme Court decision in City of Florence v. Owen Electric Coop, Inc., 832 S.W. 2d 876 (1992), state and federal law in effect is part of every contract upon execution, and thus subject to review on a petition for declaratory relief. (p. 3) And, the Amended Petition itself specifically requested "declaration of the rights, obligations and interests of the parties hereto under the Settlement Agreement of February 3, 1991, including but not limited to the dissolution of Monin, Inc. . . . ," as the trial court understood in its Order of April 6, 2000: " . . . inter alia to have the respective rights of all parties to the February 3, 1991 settlement agreement defined." (pg. 1)

Secondly, as noted by the court, a prior appeal showed preservation of the issue so that the law of the case doctrine should apply to the instant appeal. (p. 1)

Lastly, the Petitioner also reminded the Court of Appeals that at the hearing on its motion for declaratory relief, counsel, after stating there was law to support the petition, was interrupted by the judge and the hearing terminated before the legal argument could be addressed with the court or put on the record. (pp. 2-3)

Petitioner's Motion for Discretionary Review to the Supreme Court of Kentucky, outlined this question of law for purposes here: "The present appeal raised . . . fundamental issues of state and constitutional law: (1) whether or not dissolution of a corporation by judicial decree pursuant to state statute voids any contract which dictates the rights and obligations of persons affected by the dissolution and/or denies a person's right to be heard on a Petition for a Declaration of Rights; . . . "

Three arguments were raised at the Court of Appeals on the contract question: (1) under basic contract law the settlement agreement survives the dissolution of the corporation (p. 8) ; (2) voiding of the contract violated "state and federal constitutional prohibitions against legislative impairment of contracts, which apply to statutory dissolution. Sec. 19, Bill of Rights, Constitution of Commonwealth of Kentucky; Art. I, Sec. 10, United States Constitution." (pg 8) ; and (3) appellants have a fundamental statutory right to be heard on their Petition for a Declaration of Rights, and a denial of the same is a denial of due process. (pg 9)

On December 11, 2003, the Supreme Court of Kentucky denied discretionary review, effectively exhausting Petitioner's state remedies.

REASONS FOR REVIEW

Petitioner asserts that the following reasons compel granting his request for a writ of certiorari:

1. The right to private contract without interference from the government is a fundamental right recognized throughout our history of jurisprudence.
2. The issue of whether or not a contract in the form of a settlement agreement setting out the rights, interests and obligations of the owners in a corporation should survive the dissolution of that corporation should be settled by this Court.
3. Petitioner has been deprived of his contract rights, by the Commonwealth of Kentucky through its courts, in violation of state and federal constitutional provisions prohibiting impairment of contracts.
4. The state courts denied Petitioner due process and misapplied state statutes when they (a) voided the settlement agreement based on judicial dissolution of a corporation under state statute; (b) denied him a hearing on his Petition for a Declaration of Rights mandated by Kentucky statute, which by law in Kentucky, includes contract and constitutional law; (c) prevented him from arguing and/or putting on the trial court record at the hearing of April 5, 2000 his contract and constitutional law objections to voiding the contract; and (d) denied his appeals on the grounds that his claims were not preserved on the record; and (e) failed to grant relief under the circumstances per Ky. Civil Rule 61.02, permitting appellant courts in Kentucky to consider on appeal an error which affects the substantial rights of a party even though insufficiently raised or preserved for review.

Whether Petitioner's rights under the United States Constitution were given due recognition by the courts of Kentucky is a question as to which the Petitioner is entitled to invoke the judgment of this Court. This Court has the authority to determine, not only whether the right was denied, but whether it was denied in substance and effect on nonfederal grounds. Staub v. City of Baxley, Georgia, 78 S. Ct. 277, (1958)

Furthermore, the grounds for denial of due process by state courts may be examined from the overall record by this Court to review state actions, Chambers v. Mississippi,

93 S. Ct. 1038, (1973)

Finally, this Court has held that it may review federal claims even if not presented to the state court on a case by case basis. Adams v. Robertson, 177 S. Ct. 1028 (1997)

WHEREFORE, the Petitioner, Charles K. Monin, Jr., by and through the undersigned counsel requests that this Honorable Court grant his petition for a Writ of Certioari.

Respectfully submitted,

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